

This is an amendment to 16.28.4 NMAC, Sections 2, 3, 10 and 13, effective 2/27/2022.

16.28.4.2 SCOPE: The provisions of Part 4 shall apply to all licensees and applicants for license entitled to notice and hearing under the Uniform Licensing Act, (“ULA”), NMSA 1978 [Section 61-1-1 through 61-1-36 NMSA 1978] Sections 61-1-1 through -36 NMSA 1978 and to any interested person who may file a complaint against a licensee or applicant.
[16.28.4.2 NMAC - N, 7/21/2009; A, 2/27/2022]

16.28.4.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Signed Language Interpreting Practices Act, ~~[Section]~~ Sections 61-34-1 through -17 NMSA 1978.
[16.28.4.3 NMAC - N, 7/21/2009; A, 1/15/2014; A, A, 2/27/2022]

16.28.4.10 INVESTIGATION: Upon receipt of the complaint, the board will cause an investigation to be made into the subject complaint by the ~~[boards]~~ board’s standards of practice committee.
[16.28.4.10 NMAC - N, 7/21/2009; Repealed, 8/18/2011; 16.28.4.10 NMAC - N, 8/18/2011; A, 2/27/2022]

16.28.4.13 DISCIPLINARY ACTION: In accordance with the ~~[Uniform Licensing Act]~~ ULA, the board has authority to impose penalties in disciplinary matters. The ~~[Uniform Licensing Act]~~ ULA allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

A. Formal letter of reprimand: The board shall have discretionary authority to issue formal letters of reprimand or warning instead of revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the ULA and shall be matters of public record.

B. Prehearing motions: The board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing. Until such time as the board appoints a hearing officer, the chair of the board shall serve as hearing officer.

C. Settlement agreements: Following the issuance of a notice of contemplated action, the board may enter into a settlement agreement with the respondent as a means of resolving a complaint.

D. Costs of disciplinary proceedings: Licensees or applicants shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing ~~[and an action in]~~ held pursuant to Section 61-1-3 NMSA 1978 of the [Uniform Licensing Act] ULA.

E. Uniform licensing provisions: In accordance with Subsection G of Section 61-1-7 NMSA 1978 of the ~~[Uniform Licensing Act]~~ ULA, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the board shall be subject to disciplinary action.

F. License returned to the board: Any license issued by the board must be returned to the board subsequent to revocation or suspension. The item(s) listed must be returned in person or by certified mail no later than 30 days after the suspension or revocation order to the board.

G. DISQUALIFYING CRIMINAL CONVICTIONS: Convictions for any of the following offense, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving a retaining a license or certificate by the board.

(1) Physical harm to others:

(a) Section 30-2-1 NMSA 1978 “Murder”;

(b) Section 30-2-3 NMSA 1978 “Manslaughter”;

(c) Section 30-3-1 NMSA 1978 “Assault”;

(d) Section 30-3-4 NMSA 1978 “Battery”;

(e) Section 30-6-1 NMSA 1978 “Abandonment or abuse if a child”;

(f) Section 30-4-1 NMSA 1978 “Kidnapping”;

(g) Section 30-4-3 NMSA 1978 “False imprisonment”;

(h) Section 30-9-19 NMSA 1978 “Sexual assault”.

(2) Theft:

(a) Section 30-16-1 NMSA 1978 “Larceny”;

(b) Section 30-16-24.1 NMSA 1978 “Theft of identity”;

- (c) Section 30-16-26 NMSA 1978 "Theft of a credit card".
- (3) Financial crimes:
 - (a) Section 30-16-8 NMSA 1978 "Embezzlement";
 - (b) Section 30-16-9 NMSA 1978 "Extortion";
 - (c) Section 30-16-10 NMSA 1978 "Forgery".
- (4) Drug offenses:
 - (a) Section 30-31-20 NMSA 1978 "Trafficking of controlled substances";
 - (b) Section 30-31-23 NMSA 1978 "Possession of controlled substances";
 - (c) Section 30-31-21 NMSA 1978 "Distribution to a minor";
 - (d) Section 30-6-3 NMSA 1978 "Contributing to the delinquency of a minor".
- (5) Sex crimes:
 - (a) Section 30-52-1 NMSA 1978 "Human trafficking";
 - (b) Section 30-9-11 NMSA 1978 "Criminal sexual penetration";
 - (c) Section 30-9-12 NMSA 1978 "Criminal sexual contact";
 - (d) Section 30-9-13 NMSA 1978 "Criminal sexual contact of a minor";
 - (e) Section 30-6A-3 NMSA 1978 "Sexual exploitation of children";
 - (f) Section 29-11A-4(P) NMSA 1978 "Failure to register as required by sex offender registration and notification act".
- (6) Miscellaneous:
 - (a) Section 30-7-16(B) NMSA 1978 "Felon in possession of a firearm";
 - (b) Section 30-3A-3 NMSA 1978 "Stalking";
 - (c) Section 30-20-12 NMSA 1978 "Use of telephone to terrify, intimidate, threaten, harass, annoy, or offend another".
- (7) The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.
- (8) The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.
- (9) Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Signed Language Interpreting Practices Act, NMSA 1978, Sections 61-34-1 to -17 and the ULA, NMSA 1978, Section 61-1-1 to-36 NMSA 1978, regardless of whether the individual was convicted of a crime for such conduct whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in 16.28.4.13 NMAC.
- (10) In connection with an application for licensure, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:
 - (a) an arrest not followed by a valid conviction;
 - (b) a conviction that has been sealed, dismissed, expunged or pardoned;
 - (c) a juvenile adjudication; or
 - (d) a conviction for any crime other than the disqualifying criminal convictions listed in 16.28.4.13 NMAC.

[16.28.4.13 NMAC -N, 8/18/2011; A, 2/27/2022]